

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case No. 03-57182-JRG
MARIA MONTEJANO, Chapter 13
Debtor.

ORDER ON FEE APPLICATION OF
CAROL J. BASSONI

The court has reviewed the fee application of Carol J. Bassoni filed on July 15, 2004, and supplemented on November 5, 2004. The application seeks attorney's fees in the amount of \$7,456.25 and reimbursement of costs in the amount of \$255.31. For the reasons hereafter stated, the application will be granted in part and denied in part.

The debtor's petition was filed on November 5, 2003. At the filing the debtor was represented by attorney Sally J. Elkington.

The estimated fees for this case at the time of filing were \$2,850 of which \$195 was paid by the debtor prior to filing. The fees were estimated pursuant to the court's fee schedule.

The San Jose Division of the Northern District has over 7,000 pending Chapter 13 cases. The majority of these cases are similar in the sense that they involve similar legal services such as

1 filing the petition, statement of affairs and schedules and,
2 possibly, a motion to sell or refinance a residence, a motion for
3 relief from the automatic stay, etc. As a result, the court has
4 established Guidelines For Payment Of Attorney's Fees In Chapter
5 13 Cases. The Guidelines include a fee schedule. The schedule
6 does not limit fees but rather provides that if an attorney charges
7 in accordance with the schedule, and no objections are raised, the
8 scheduled fees will be approved at the time of confirmation of the
9 plan without the filing of a fee application. Numerous courts
10 across the country have fee schedules for Chapter 13 cases.

11 Periodically, the consumer bar surveys fees nationally and
12 presents a request for a review and adjustment of the guideline
13 fees.¹ A copy of the court's current fee schedule is attached. It
14 was adopted on August 1, 2003, based on a recommendation from the
15 consumer bar. The present format contains three types of standard
16 fees. The first involves fees for services rendered in the basic
17 case which can range from \$1,800 to \$6,350, depending on the
18 circumstances. This type of fee should handle the vast majority
19 of cases from start to finish unless extraordinary circumstances
20 exist.

21 The second type of fee is a standard fee for handling the sale
22 or refinance of real property or a motion to avoid a judicial lien.
23 The fee is \$300 if there is no court hearing required and \$450 if
24 one is needed. The bar represents that this is a reasonable fee
25 for this service.

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27 ¹ The National Association of Consumer Bankruptcy Attorneys periodically prepares a
28 survey entitled Chapter 13 Attorneys Fees & Function Survey. This Survey provides information
about fee schedules and fee practices for approximately 100 courts across the country.

1 The final type of fee is based on the fact that in some cases
2 circumstances change during the course of the case. Plans
3 sometimes need to be modified and a standard fee of \$200-\$400 is
4 set, provided the modification is more than one year after the
5 filing of the petition. A fee of \$200-\$350 is set for new motions
6 for relief from the automatic stay and a fee of \$450 for motions
7 to dismiss or convert. Again, these fees were proposed by the bar
8 as representing reasonable fees for these services absent
9 extraordinary circumstances.

10 The guideline fees of \$2,850 were approved by an order at the
11 time the debtor's plan was confirmed on April 9, 2004. These fees
12 were awarded to attorney Sally J. Elkington.

13 Twelve days following confirmation, on April 21, 2004, Carol
14 J. Bassoni substituted into the case. Between April 9, 2004, and
15 October 29, 2004, Bassoni billed \$7,456.25 for fees and \$255.31 for
16 costs.

17 In a normal case additional fees may be requested by
18 application for those cases with complications not anticipated by
19 the schedule. There is nothing in the debtor's schedules to
20 suggest this is an unusual Chapter 13 case. The debtor owns a home
21 which she valued at \$475,000. There is a first and second mortgage
22 totaling at least \$418,277. Her Chapter 13 Plan indicates she is
23 behind \$45,223 on her mortgage payments. There is no equity in the
24 home and it appears clear she can not handle the mortgage payments.
25 She also owns a 2000 Mitsubishi on which \$16,271 is owed. She has
26 10 unsecured creditors totaling \$26,797.

27 In examining Bassoni's time records it appears that all of her
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1 billings were in connection with an attempt to close a short sale
2 of the debtor's residence, that is, a sale in which the proceeds
3 are insufficient to satisfy the full demands of the mortgage
4 holders. In such circumstances, it would seem obvious that there
5 is no benefit flowing from the transaction to creditors or the
6 estate. While services need not result in a material benefit to
7 the estate, they must be reasonably likely to benefit the estate
8 at the time rendered in order to be compensable. The court must
9 also consider the circumstances and manner in which services were
10 performed and the results achieved. In re Mednet, 251 B.R. 103,
11 108 (B.A.P. 9th Cir. 2000).

12 It is also not clear from the application how the debtor might
13 have benefitted from the transaction or why the debtor would not
14 have been better off letting the property go to foreclosure. It
15 is the court's understanding that a sale eventually did close. An
16 inference can be drawn that the debtor had the benefit of living
17 in the home during the time it took to close.

18 The court also recognizes that Bassoni has not been
19 compensated since substituting into this case. For these reasons
20 Bassoni is awarded compensation in the amount of \$4,000 at this
21 time. The remainder of the request is denied without prejudice.
22 To be considered further Bassoni must provide further explanation
23 detailing the benefits conferred on the estate or the debtor, their
24 value and why such benefits justify further compensation.

25 DATED: _____
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JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

*United States Bankruptcy Court
Northern District of California
San Jose Division*

**GUIDELINES FOR PAYMENT OF ATTORNEY'S FEES
IN CHAPTER 13 CASES**

The following are guidelines for the circumstances under which a detailed fee application need not be filed in Chapter 13 cases and the manner in which the Chapter 13 Trustee will disburse fees which are approved.

A. Fee Applications.

1. Counsel may receive an order approving fees and costs up to the amounts set forth in Paragraph 2 without filing a detailed application if:

- (a) Counsel has filed and served the Chapter 13 Trustee with an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," copies of which are available on the Court's website;
- (b) Counsel has accepted no more than \$750 as a retainer in a consumer case or \$1,500 as a retainer in a business case;
- (c) No objection to the requested fees has been raised.

2. The maximum fee that can be approved through the procedure described in Paragraph 1 is:

- \$1800 for the basic case; and an additional
- \$ 750 if the case involves real property claims;
- \$ 500 for each additional parcel of real property with an encumbrance of at least \$10,000;
- \$ 500 if the case involves state or federal tax claims
- \$ 300 if the case involves vehicle loans or leases;
- \$1500 if the case involves an operating business;
- \$ 400 if the case involves support arrears claims;
- \$ 300 if the case involves student loans;
- \$ 300 if the case involves more than 25 creditors, including collection agencies and attorneys.

Additional flat fees for services rendered will be automatically approved, upon application by the attorney without requiring the submission of time records, as follows:

Plan modifications filed after one year from the petition date:

- a. Not requiring amended Schedules I & J \$ 200
- b. Requiring amended Schedules I & J \$ 400

Permission to sell, refinance, or purchase real property, or one or more motions to avoid judicial liens:

- a. Not requiring court hearing \$ 300
- b. Requiring court hearing \$ 450

New motions for relief from the automatic stay, excluding unopposed motions, filed after one year from the petition date:

- a. Regarding personal property \$ 200
- b. Regarding real property \$ 350

Motions to dismiss, convert, or reconvert, excluding Trustee's Notices of Default regarding plan payments: \$ 450

3. If an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" is not filed, counsel has accepted more than the amount authorized in A.1.(b) without court approval, or there is an objection, an order will not be entered automatically pursuant to these Guidelines.

1 4. If counsel elects to be paid other than pursuant to these Guidelines, all fees including the retainer must be
2 approved by the court whether or not the fees are payable through the Chapter 13 Trustee's Office and
whether or not fees are paid for services in connection with the Chapter 13 case.

3 5. If counsel applies for fees, counsel must comply with Rules 2002 and 2016 of the Federal Rules of
4 Bankruptcy Procedure, as well as the "Guidelines for Compensation and Expense Reimbursement of
Professionals" adopted by the Bankruptcy Judges of the Northern District of California.

5 6. Counsel may request reimbursement of out-of-pocket court fees advanced, even if counsel elects to receive
6 the automatic fees available in Paragraph 2.

7 7. On its own motion or the motion of any party in interest, the court may order a hearing to review any fee
whether paid or unpaid.

8 **B. DISTRIBUTION OF FUNDS IN CHAPTER 13 CASES.**

9 Payments shall be disbursed in the following order:

10 1. \$750 towards attorney's fees, less any amount received pre-filing as a retainer;

11 2. To secured creditors and the balance of attorney's fees. Those secured creditors that are specified
12 in the plan to receive fixed monthly payments will be paid the amount specified. If fixed monthly payments are
13 specified in the plan for all secured creditors, the balance of the plan payment will be disbursed toward
attorney's fees. If fixed monthly payments are not specified in the plan for all secured creditors, secured claims
without fixed monthly payments and the balance of attorneys fees will be pro-rated;

14 3. To priority creditors in the order prescribed by the Bankruptcy Code;

15 4. To unsecured creditors.
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26 Revised: 8/03

27 **Case No. 03-57182-JRG**
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CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON FEE APPLICATION OF CAROL J. BASSONI by placing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

Devin Derham-Burk
Chapter 13 Trustee
P.O. Box 50013
San Jose, CA 95150-0013

Carol Bassoni
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San Jose, CA 95113-2389